

HARVEY SINGLETON

IBLA 86-374

Decided February 29, 1988

Appeal from a decision by the Canon City District Office, Bureau of Land Management, setting rental rate for communication site right-of-way C-27939.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Generally

An appraisal of fair market value for a communication site right-of-way will not be set aside on appeal where an appellant fails to show the rental rate set by BLM is excessive.

APPEARANCES: Harry Singleton, Canon City, Colorado, pro se.

OPINION BY JUDGE ARNESS

Harvey Singleton has appealed from a January 15, 1986, decision by the Canon City District Office, Bureau of Land Management (BLM) increasing the rental rate for a communication site. The January 15, 1986, decision provided for a rental rate increase for Singleton's Twin Mountain communication site to \$2,500 annually, effective August 30, 1986. On appeal to this Board, Singleton complains the rental rate increase was flawed in four particulars. First, he contends the Twin Mountain site is not economically comparable to four of the six comparable sites used by the BLM appraisal

to set the value for the Twin Mountain site. Second, Singleton argues the comparables used by BLM's appraisal are not physically comparable and do not possess the same performance characteristics. Third, he states that the market served by the site was not considered to be a factor affecting value by the BLM appraisal. Finally, Singleton submits two sites said to be comparable to the Twin Mountain site. His appraisal of those sites states:

4. Local comparable site costs in Southeastern Colorado are based on rentals from use of the site. The following are current valuations in the area:

- a) USDA-USFS Deer Peak Special Use permit
\$100 fee per year - flat rate for equipment
valuation less than
\$50,000
-or-
2% of equipment valuation
at site if more than \$50,000.
plus 5% of revenue-of rentals collected from the
site
- b) Cheyenne Mountain electronic site - Privately
owned
\$0 / month - land rental for tower and
building
\$75 / month - per business radio base station
on the site

Each communications site evaluates fair market value differently. The USFS Deer Peak site allows for administrative costs plus an additive amount as the site use increases. Cheyenne Mountain site allows for increasing revenue as the use of the site increases.

For these reasons, Singleton concludes that BLM's right-of-way appraisal is too high; he does not, however, state an alternative to BLM's appraisal, and he reaches no stated conclusion concerning the current fair market value of the Twin Mountain site. He asks, instead, that BLM reconsider the appraisal which was the basis for the January 15, 1986, decision.

The first and fourth objections raised by Singleton are a rejection of BLM's appraisal method, the market-comparison approach. Singleton first challenges this approach, stating that the market to be considered should be limited to Fremont County, where the Twin Mountain site is located. Specifically, he objects to the use of market comparables from Fort Collins, which he complains serves a "vastly more affluent market." In his fourth argument, which consists of the offer of two "local" sites, presumably located in Fremont County, he rejects the market comparison approach to value altogether, and argues that either the cost or the income approach to valuation should be used.

This approach to value was rejected by BLM's appraiser in his appraisal report for the reason:

The purpose of this appraisal is to estimate rental value of the site for a specified use, as if unimproved. Therefore, the cost approach is not applicable. Net income attributable to an unimproved site cannot be accurately estimated from available data. Communication sites often represent connecting servitudes linking sites within a network or system; each site is combined with related on-site and off-site facility improvements and various combinations of production agents. Consequently, the

income approach to rental estimation is not used. Appraisal of fair market rental is best accomplished using the market comparison approach which relies on direct comparison with similar properties rented or leased for similar use. Adjustments are made for various factors that influence value and an overall rating is assigned each rental property. After final analysis, an estimate of fair market rental is made for the subject site.

(Appraisal at 3). Except for the stated conclusion that comparisons of value should be limited to Fremont County, Singleton has not explained why the comparable leases used by BLM should not have been considered. We must conclude the comparable-sales method was properly employed by BLM in this instance and see no reason to abandon our prior position that the market- comparison approach is the preferred method of appraisal for communication- site rentals. See Mesa Broadcasting Co., 94 IBLA 381 (1986).

Singleton's second objection to BLM's appraisal argues that the comparable sites chosen were not the same size or altitude. These factors were, however, considered by the BLM appraisal which observed that size and physical character were factors which were taken into consideration by the appraiser. See Appraisal at 6. Moreover, in considering each individual comparable site these factors were separately considered by the BLM appraiser in comparison to the Twin Mountain site.

Finally, Singleton's third point, that the location of the Twin Mountain site in relation to nearby population was not considered when setting value, is directly contradicted by BLM's appraisal report which refers to this factor both generally (Appraisal at 4) and specifically, when it compares the location of each comparable considered to the Twin Mountain site.

[1] Under 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal, although BLM may allow use of a right-of-way prior to a formal appraisal. Jancur, Inc., 93 IBLA 310 (1986); Glover Communications, Inc., 89 IBLA 276 (1985); see also Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). An appraisal of fair market value for a communications site right-of-way will not be set aside on appeal if the appellant fails to show error in the appraisal methods used by BLM or fails to show by convincing evidence that the charges are excessive. Jancur Inc., supra; Glover Communications, Inc., supra; see Donald R. Clark, 70 IBLA 39 (1983); Francis H. Gifford, 62 IBLA 393 (1982); Dwight L. Zundel, 55 IBLA 218 (1981); B&M Service, Inc., 48 IBLA 233 (1980).

The comparable-lease method of appraisal, used by BLM in this case to determine the Twin Mountain sites fair-market value, is the preferred method for appraising the fair-market value of communication sites where there is sufficient comparable rental data. See Southern California Gas Co., supra; Mountain States Telephone & Telegraph Co., supra. The BLM appraiser considered six other communication site leases in the vicinity of appellant's right-of-way. After consideration of the differences and similarities between those leases and appellant's right-of-way, the fair market rental

value for appellant's right-of-way was determined to be \$2,500 per year. Singleton has shown no error in the appraisal methods used by BLM, nor has he provided evidence to show that the charges are excessive. While he has suggested that the market-comparison approach relied upon by BLM should not have been used, he has failed to prove by a preponderance of the evidence that the use of this approach was erroneous in this case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge